

June 16, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0400628**

DONCO DRAGANOV, STEVEN LEIGH and ROWANNA & KELVIN PERRY
Code Enforcement Appeals

Location: 10874 – 6th Avenue South

Appellants:¹ **Steven Leigh**
12512 Marine View Drive Southwest
Burien, Washington 98146
Telephone: (206) 953-1652

Rowanna & Kelvin Perry
represented by **Gerald Robison**
648 South 152nd, Suite 7
Burien, Washington 98148
Telephone: (206) 243-4219

King County: Department of Development and Environmental Services,
represented by **DenoBi Olegba**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1528
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal; extend dates of compliance
Examiner's Decision:	Deny appeal; extend dates of compliance

¹ The appeal of Donco Draganov was summarily dismissed by Examiner Order on April 28, 2005.

EXAMINER PROCEEDINGS:

Hearing Opened:	April 14, 2005
Hearing Closed:	April 14, 2005
Hearing reopened administratively:	April 28, 2005
Hearing reclosed:	May 12, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On January 28, 2005, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Donco Draganov/Draganov Construction, Kelvin Perry and Steven Leigh that alleges code violations at properties located at 10874 6th Avenue South (Lots 25 and 26, Block 16, *Beverly Park Division I*). The Notice and Order cited the properties for violations by:
 - (a) “Construction of a (lower) retaining wall without the required permit(s) and inspections in violation of Sections 16.02.240 of the King County Code and Sections 105.1 and 113.1 of the 2003 International Building Code.
 - (b) “Failure to comply with the requirements of permit #L02CG036 in violation of Sections 23.02.010B2 and 23.24.100A1 including the following violations:
 - i. “Construction of the driveway and upper retaining wall were not completed per the approved plans for grading permit #L02CG036.
 - ii. “A temporary guardrail removal permit was obtained for construction of the driveway and permit #L02CG036 required an approved permanent guardrail be installed.”

The Notice and Order also revoked permit #L02CG036 and associated extension #L03GI161.

The Notice and Order required that by March 15, 2005, complete permit applications be submitted for a) the lower retaining wall, and b) a new grading permit for the driveway, upper retaining wall and guardrail be obtained either for construction pursuant to the previously approved permit or based on an as-built and approval on review of the work actually performed. During any such application period, all deadlines for requested information and permit obtainment must be met.

2. Appellant Draganov, the contractor who performed the work which is the subject of the Notice and Order, filed a timely notice of appeal of the Notice and Order, but did not file a substantial statement of appeal as required. Pursuant to a DDES motion for dismissal of his appeal, Mr. Draganov’s appeal was dismissed by separate Order issued April 28, 2005.

3. Appellants Leigh and Perry, current owners of the respective affected properties, filed timely notices and statements of appeal. The accepted appeals raise the following claims:
 - A. The Perrys are innocent purchasers of their home with no prior knowledge of the construction violations, and assert that the violations are the builder's (Draganov's) responsibility and the builder should be held accountable, not the Perrys.
 - B. Leigh likewise assigns responsibility to the builder, who Leigh asserts did not comply with special conditions on the grading permit and failed to call for county inspections as required. (Leigh also notes that the Perry residential building permit was given final approval prior to inspection of the driveway construction and grading.) Leigh requests that the upper retaining wall be verified as constructed to specifications, that a permit be required for the lower retaining wall, and that damaged asphalt be repaired.

The permit revocation was not appealed.
4. The construction facts pertinent to the violation issues at hand consist of the following:
 - A. All of the construction activity at issue was performed in or around 2002 by Donco Draganov/Draganov Construction on the Perry property and on an easement on the Leigh property. None of the construction actions were undertaken by the affected property owners Perry and Leigh. DDES confirms Leigh's and the Perrys' innocent purchaser status with regard to the violations on their respective properties.²
 - B. The driveway from 6th Avenue South to the Perry residence descends a steep manmade slope and required engineered construction plans for its installation. The construction of driveway improvements on the Perry property, including the installation of the upper retaining wall and required reinstallation of a temporarily removed 6th Avenue South guardrail, was not performed in accordance with the approved plans. Numerous shortcuts and unapproved field changes were conducted. The upper retaining wall is over-height from the approved plans, and was not installed with the proper angle from vertical to provide sufficient stability. The guardrail has not been installed to the necessary installation specifications, and comprises a safety hazard (the guardrail, located at the driveway entry onto 6th Avenue South, is placed above a steep bank descending from the 6th Avenue South roadway).
 - C. The construction of the lower retaining wall was performed without required permits in order to support installation and stability of a sanitary sewer line. Other aspects of the development led to the installation of a stormwater dispersion trench above the retaining wall, which causes development drainage to be released above and over the retaining wall. Within a year of installation, the wall has been affected by structural movement and sinking, and presents an erosion hazard on a steep slope.
5. The evidence in the record supports a finding that the charges of code violation in the Notice and Order are correct.

² Mr. Draganov has reactivated the grading permit and evidently seems inclined to complete the work properly.

CONCLUSIONS:

1. Regardless of any innocent purchaser qualification (such as that of Leigh and the Perrys in this case), a property owner is still responsible for abating code violations. [KCC 23.02.130(B)] In other words, an innocent purchaser may not be liable for committing the original violation, and therefore is not subject to penalties for the original violation, but still is responsible for correcting the violation. A property purchaser essentially inherits any code violations on assuming ownership of a property. Leigh and the Perrys are not subject to penalties for the violations, but as the respective property owners are required to have the violations corrected. How that occurs, other than timing and conformity with code requirements, is not a matter for the county to decide: ultimate work performance and financial responsibilities and liabilities are not under the Examiner's jurisdiction.
2. As the subject construction work was performed in violation of county code, the violation charges of the Notice and Order are correct and are sustained on appeal.
3. As the deadlines for compliance have been obviated by the time taken on appeal, the Examiner shall impose new deadlines based on DDES's original compliance schedule, with some clarifications and revisions to the work items required.

DECISION:

By Order issued April 28, 2005, the Draganov appeal was summarily dismissed.

The Perry and Leigh appeals are **DENIED**, except that the Notice and Order requirements and deadlines for regulatory compliance are clarified, revised and extended as stated in the following Order.

ORDER:

1. Apply for and obtain the required permits, inspections and approvals for the lower retaining wall, with a complete application to be submitted by **August 1, 2005**. Meet all deadlines for requested information associated with the permit and pick up the permit within the required deadlines.
2. Apply for and obtain a valid grading permit for the driveway/upper retaining wall/road guardrail reinstallation. The permit application must be completed in accordance with the guidelines outlined in King County Development Assistance Bulletin No. 28. A complete application shall be submitted to King County Land Use Services Division for review and approval by **August 1, 2005**. The application shall include either:
 - a. A plan to reconstruct the driveway and road guardrail, including any necessary reconstruction of the upper retaining wall, to the standards previously approved under permit #L02CG036 drawing specifications and provide a guardrail design that is approved by Safety Management, Traffic Engineering Section, Road Services Division of the Department of Transportation or hire a DOT approved contractor to build the guardrail to DOT standards,

OR

- b.
 - i.) provide verification that the drainage has been installed per plan and is functioning per the design of an engineer licensed in the State of Washington; ii.) provide an accurate site plan illustrating the location and size of the upper retaining wall, driveway and catch basin, as well as the associated structural analysis needed to verify the safety of the additional height of the existing upper retaining wall; iii.) provide a guardrail design that is approved by the Safety Management, Traffic Engineering Section, Road Services Division of the Department of Transportation or hire a DOT approved contractor to build the guardrail to DOT standards; and iv.) detail any and all work and repair necessary to bring the driveway and appurtenances to applicable codes and specifications.
3. No penalty shall be assessed against Appellants Leigh and Perry or the cited properties for the original violations onsite. If the above corrective measures are not met, however, DDES may assess applicable abatement costs against Appellants Leigh and Perry and the respective properties under KCC 23.02.130(B).
4. No penalties shall be assessed against Donco Draganov/Draganov Construction if all the deadlines stated within conditions 1 and 2 above are met. If any of these deadlines are not met, DDES may impose penalties against Donco Draganov/Draganov Construction retroactive to the date of this order.

ORDERED this 16th day of June, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 16th day of June, 2005 via certified mail to the following:

Steven Leigh	Gerald Robison
12512 Marine View Dr. SW	648 S. 152nd St., #7
Burien, WA 98146	Burien, WA 98148

TRANSMITTED this 16th day of June, 2005, to the following parties and interested persons:

Donco Draganov Draganov Construction 13224 - 32nd Ave. S. Tukwila WA 98168	Steven Leigh 12512 Marine View Dr. SW Burien WA 98146	Rowanna & Kelvin Perry 10874 - 6th Ave. S. Seattle WA 98168
Gerald Robison 648 S. 152nd St., #7 Burien WA 98148	Suzanne Chan DDES, Code Enf. MS OAK-DE-0100	Elizabeth Deraitus DDES/LUSD Code Enf. Supvr. MS OAK-DE-0100

Patricia Malone
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

DenoBi Olegba
DDES/LUSD
Code Enforcement
MS OAK-DE-0100

Greg Sutton
DDES/LUSD
Code Enforcement
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE APRIL 14, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0400628.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were DenoBi Olegba and Greg Sutton, representing the Department; Appellants Donco Draganov and Steven Leigh; and Gerald Robison representing Rowanna & Kelvin Perry.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report for 4/14/05
- Exhibit No. 2 Copy of Notice and order issued 1/28/05
- Exhibit No. 3 Copy of Draganov Notice and Statement of Appeal received 1/31/05
 - 3a Copy of Perry Notice and Statement of Appeal dated 2/02/05
 - 3b Copy of Leigh Notice and Statement of Appeal dated 2/04/05
- Exhibit No. 4 Copies of codes cited in the Notice and Order
- Exhibit No. 5 Photographs (16 color copies) of location cited
- Exhibit No. 6 General site plan and driveway profile for L02CG036, dated 1/29/02
 - 6A Letter to DDES from Steve Leigh with attached color copies of photographs, dated 6/17/04
 - 6B Sight distance plan for the Draganov property by Transportation Engineering Northwest, dated 3/28/02
 - 6C Grading/Clearing Permit for project no. L02CG036 dated 4/05/02
 - 6D Letter to Donco Draganov from Geotech Consultants, Inc., dated 2/07/02
 - 6E Letter to Donco Draganov from Joan Brown dated 7/07/03
 - 6F Letter to Donco Draganov from Joan Brown dated 10/21/03
 - 6G Memo to Donco Draganov from Michael J. Read of Transportation Engineering NorthWest, LLC, dated 3/28/02
 - 6H Letter to Donco Draganov from Greg Sutton, dated 2/01/02
 - 6I Permit Application Worksheet for L02CG036 with attachments, dated 1/30/02

- 6J Easement I060609098 dated 86/06/09
 - 6K Fax cover sheet with attachments (4 pgs.) to Greg Sutton from Ron Riach
 - 6L Fax cover sheet with attachments (2 pgs.) to Ron Riach from Henry Perrin
 - 6M Conditions of Permit Approval for project no. L02CG036 dated 4/4/02
 - 6N King County Public Works diagrams 5-006, 5-004 and 5-008 with attached document from JRR Engineering, Inc., of ultrablock wall
 - 6O Fax transmittal sheet to Mazen Haidar from Michael Read with one-page attached memo dated 4/01/02
 - 6P Stop work order for 10874 6th Ave. S. (undated)
 - 6Q Letter to Donco Draganov from Norton Posey dated 1/11/02
 - 6R Email chain between Greg Sutton, Michael Simon and Don Gauthier dated 8/07 & 08/03
- Exhibit No. 7 Easement documents (8 pages)

PTD:ms

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